

State of New Hampshire
Americans with Disabilities –
Reasonable Accommodation Policy

1. Policy Statement

It is the policy of the [State of New Hampshire](#) to comply with all State and federal laws concerning the employment of people with disabilities so as not to discriminate against persons with disabilities, and to provide reasonable accommodations to qualified individuals with disabilities in all aspects of employment.

2. Purpose

The purpose of the policy is to ensure equal employment opportunity throughout State service to qualified individuals with a disability.

According to the [US Equal Employment Opportunity Commission](#):

"Title I of the [Americans with Disabilities Act of 1990](#) prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. The ADA covers employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations. The ADA's nondiscrimination standards also apply to federal sector employees under section 501 of the Rehabilitation Act, as amended, and its implementing rules.

"An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

"A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.

"Reasonable accommodation may include, but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

"An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business.

"Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

"An employer is not required to lower quality or production standards to make an accommodation; nor is an employer obligated to provide personal use items such as glasses or hearing aids."

3. Scope

This policy and these guidelines are not intended to replace, but to supplement the "[EEOC Guidance on Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act.](#)"

4. Health and Safety

All employees are required to comply with safety standards. Applicants who pose a direct threat to the health or safety of other individuals in the workplace, which threat cannot be eliminated by reasonable accommodation, will not be hired.

Current employees who pose a direct threat to the health or safety of other individuals in the workplace will be placed on leave until the threat can be eliminated, with or without a reasonable accommodation, or the employee is removed from the current position in accordance with the provisions of PART Per 1002 of the NH Code of Administrative Rules.

5. Division of Personnel

The [Division of Personnel](#) is responsible for:

- a. Implementing this policy by making it available to all members of the public;

- b. Assisting applicants, employees and State agencies in complying with the policy; and
 - c. Assisting applicants, employees and State agencies in resolving issues involving identification of essential job functions, determination of a qualifying disability, identification and implementation of reasonable accommodations, and evaluation of undue hardship claims.
6. Responsibilities of Individuals with Disabilities
- a. A qualified individual with a disability may request a reasonable accommodation at any time, whether during the application process, after being offered a job, or at any subsequent time at which the person with a disability becomes aware of a workplace barrier that is preventing, or will prevent, him or her from performing one or more essential elements of the job.
 - b. In order to request a reasonable accommodation, it is not necessary for the individual to mention the ADA or use the words "reasonable accommodation." As a preliminary step in requesting a reasonable accommodation, the individual only needs to advise the employer, verbally or in writing, that because of a disability, the individual is having difficulty performing one or more functions of the position.
 - c. The initial request for a reasonable accommodation may be made by someone other than the individual with a disability, including, but not limited to, a family member, friend, health professional, or other representative.
 - d. A qualified individual with a disability who is seeking a reasonable accommodation must cooperate with the employer in identifying the type of reasonable accommodation that would enable the individual to apply for or perform the functions of the job.
 - e. Whenever the disability and/or the need for a reasonable accommodation are not obvious, the employer may ask the individual requesting an accommodation for reasonable documentation about the disability as well as the functional limitations that the disability creates in relation to the job or the application process.
 - f. If the individual's disability or the need for a reasonable accommodation is not obvious, and the individual requesting an accommodation refuses to cooperate by providing reasonable documentation requested by the employer, that individual will not be entitled to reasonable accommodation.

7. Responsibilities of the Employer in Responding to a Request for Reasonable Accommodation
- a. After receiving a request for a reasonable accommodation, the employer and the individual should engage in an informal process to clarify what the individual needs and to identify the appropriate reasonable accommodation.
 - b. If the disability and/or the necessity for a reasonable accommodation are not obvious, the employer may ask the individual who is requesting an accommodation for reasonable documentation from an appropriate health care or rehabilitation provider concerning the existence of the disability and the necessity of a reasonable accommodation in relation to the job. In making such a request, the employer must specify what types of information they are seeking regarding the disability, its functional limitations, and the need for reasonable accommodation. Documentation is sufficient if it substantiates that the individual has an ADA disability and needs a reasonable accommodation.
 - c. If the documentation provided by the individual requesting an accommodation is insufficient to demonstrate that the individual has an ADA disability, or that the disability in relation to the job requires a reasonable accommodation, the employer may require the individual who is requesting an accommodation to see an appropriate health care or disability professional of the employer's choosing in order to obtain verification that the individual has an ADA disability, that the disability creates functional limitations in relation to the job, and that the individual needs a reasonable accommodation.
 - d. If the individual fails to cooperate in substantiating the existence of an ADA disability in relation to the position and the need for a reasonable accommodation, the individual will not be entitled to a reasonable accommodation.
 - e. The employer may not require an employee with a disability to accept a reasonable accommodation that the individual does not want. However, the employee's or applicant's rejection of the proposed accommodation may render that person unqualified to remain in the job.
 - f. An employer must make a reasonable accommodation for an applicant with a disability to participate in the application and selection process even if the employer believes it will be unable to provide the individual with a reasonable accommodation on the job.
 - g. Unless an applicant's disability is obvious, or the applicant has voluntarily disclosed that he or she has an ADA disability, the

employer generally should not ask whether or not a reasonable accommodation will be needed for the applicant to perform specific job functions.

- h. An employer must provide a reasonable accommodation to enable qualified employees with disabilities to have equal access to information communicated in the workplace, including computers, bulletin boards, mail boxes, posters and public address systems, regardless of whether or not the employee needs that information to perform his or her job.
 - i. An employer must provide a reasonable accommodation to a qualified employee with a disability to attend training and obtain other benefits of employment.
 - j. If an employer restructures an employee's job to eliminate some marginal functions in order to provide a reasonable accommodation to an otherwise qualified individual with a disability, the employer may require that employee to take on additional marginal functions that they can perform.
8. Reasonable accommodations may include, but are not limited to:
- a. Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
 - b. Job restructuring, modifying work schedules, reassignment to a vacant position.
 - c. Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.
 - d. Permitting use of paid or unpaid leave.
9. Privacy Issues

An employer may not tell other employees that an individual is receiving a reasonable accommodation when employees ask questions about a co-worker with a disability. Supervisors and managers may be informed of an employee's disability if that information is required for them to understand the need for an accommodation and the necessary restrictions on the employee's work duties. First aid and safety personnel may be informed of an individual's disability if the disability might require emergency treatment.

10. Undue Hardship

- a. An employer may not claim undue hardship based upon other employees' or customers' prejudice about the qualified individual's disability.
- b. An employer may not claim undue hardship simply because the gross cost of a requested reasonable accommodation is expensive. It is the employer's responsibility to explore the possibility of external sources of funding or, where no external funding or assistance is available, to ask the qualified individual with a disability if he or she is willing to pay those portions of the cost that the employer will be unable to pay without creating an undue hardship.
- c. An employer may not claim an undue hardship solely because a reasonable accommodation would require the employer to make changes to property owned by someone else, unless the owner of the property refuses to allow the employer to make the modifications required to implement the reasonable accommodation.
- d. An employer may not deny a request for leave as a reasonable accommodation solely because the employee can not provide a fixed date of return, or can only provide an approximate date of return. Each situation must be evaluated individually.
 - If an employer is able to show that the lack of a fixed date of return creates an undue hardship, such as disruption of operations because the employer can neither plan for the employee's return nor permanently fill the position, it can deny the leave.
 - If an employer does grant leave without a fixed date of return as a reasonable accommodation, the employer has the right, as part of an interactive process with the employee, to require the employee to provide periodic updates on his or her condition and possible date of return. The employer then has the right to re-evaluate whether or not continued leave beyond that originally approved creates an undue hardship.
 - Employers are not required to grant leave, with or without a fixed date of return, if there is another reasonable accommodation that would be effective.
- e. An employer may claim an undue hardship if providing a reasonable accommodation would require the employer to modify the work hours of an employee with a disability and, by doing so, prevent other employees from performing their jobs.

11. Medical Examinations and Inquiries

- a. Employers may not ask job applicants about the existence, nature, or severity of a disability; however, all applicants may be asked about their ability to perform specific job functions.
- b. A job offer may be conditioned on the results of a medical or physical examination, but only if the examination is required for all applicants in similar jobs.
- c. Medical or physical examinations of employees must be job related and consistent with the employer's business needs.

12. Drug and Alcohol Abuse

Employees and applicants currently engaging in the illegal use of drugs are not covered by the ADA when an employer acts on the basis of such use. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

13. Retaliation

It is unlawful to retaliate against an individual for opposing employment practices that discriminate based on disability, for filing a discrimination charge, or for testifying or participating in any way in an investigation, proceeding, or litigation under the provisions of the ADA.

14. Useful Links

Governor's Commission on Disability
<http://www.state.nh.us/disability/index.html>

New Hampshire Commission for Human Rights <http://www.state.nh.us/hrc/>

NH Vocational Rehabilitation (NH Department of Education)
<http://www.ed.state.nh.us/education/doe/organization/adultlearning/VR/testing.htm>

Equal Employment Opportunity Commission
<http://www.eeoc.gov/>

Job Accommodation Network
<http://www.jan.wvu.edu/>

New England ADA & Accessible IT Center
<http://www.NewEnglandADA.org/>